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statute authorizing the taking of such a protected property right must therefore provide reasonable means for compensation, prior or subsequent. *State v. City of Perth Amboy*, 52 N. J. L. 132, 18 Atl. 670; *Tuttle v. Justices of Knox County*, 89 Tenn. 157, 14 S. W. 486. See COOLEY, CONSTITUTIONAL LIMITATIONS, 7 ed., p. 813. It is also essential, except in three or four jurisdictions, that some sort of notice be given to the property owner before or after condemnation. See 2 LEWIS, EMINENT DOMAIN, 3 ed., § 564. Even where a statute does not specifically provide for notice, its constitutionality is usually upheld by implying a requirement for notice. See *Peoria & R. I. Ry. Co. v. Warner*, 61 Ill. 52. It seems better, however, to avoid such judicial legislation and hold void a statute which makes no provision for reasonable notice. *Savannah, F. & W. Ry. Co. v. Mayor*, 96 Ga. 680, 23 S. E. 847; *Board of Education v. Aldredge*, 13 Okla. 205, 73 Pac. 1104. In the principal case, the filing of a map to close the street was the only notice prescribed by the statute. The filing of a notice of appropriation in the registry of deeds has been held sufficient constructive notice in another jurisdiction to bar all right to compensation after three years. *Appleton v. City of Newton*, 178 Mass. 276, 56 N. E. 648. But (unless it can be said that the abandonment of the street by the city would itself carry the necessary notice) the doctrine of the principal case seems preferable, and the decision must be supported. It is settled, however, that if the landowner is protected by adequate notice, the mere fact that the statute throws upon the landowner the duty to seek compensation within a fixed time will not render it unconstitutional. *Banise v. Town of Clark*, 69 Minn. 53, 71 N. W. 819; *Barker v. Southern Ry. Co.*, 137 N. C. 214, 49 S. E. 115.

EVIDENCE — CHARACTER OF PARTIES — CRIMINAL PROSECUTION FOR ADULTERY: CHARACTER OF THE ALLEGED PARTICIPANT. — At the trial of an indictment for adultery, the defendant offered evidence of the good character of the woman with whom he was charged to have committed the offense. The evidence was excluded. *Held*, that the evidence should have been admitted. *Glover v. State*, 82 S. E. 602 (Ga. App.).

According to the general rule applicable in civil cases, the character of the defendant is not admissible on the issue of his adultery in an action for divorce. *Humphrey v. Humphrey*, 7 Conn. 116. But see 13 HARV. L. REV. 607. The defendant's character is equally inadmissible in criminal prosecutions for adultery, unless he takes advantage of the established exception allowing the criminal defendant to offer evidence of his own good character. *State v. Snyder*, 86 Vt. 449, 85 Atl. 984. But when the character of a third party is offered, the character rule applies with much diminished force, and the tendency is to treat the evidence like other collateral matter. See 1 WIGMORE, EVIDENCE, § 68. When adultery is in issue, therefore, since the proof must necessarily be largely circumstantial, and the character of the participant is usually quite relevant, the considerations favoring admissibility generally prevail. Thus, in a criminal action like that in the principal case, the good character of the alleged participant may be shown by the defendant to refute the charge. *Commonwealth v. Gray*, 129 Mass. 474. On the same principle, the prosecution may show the bad character of the participant. *State v. Eggleston*, 45 Ore. 346, 77 Pac. 738; *Sutton v. State*, 124 Ga. 815, 53 S. E. 381; *State v. Nieburg*, 86 Vt. 392, 85 Atl. 769. *Contra*, *Guinn v. State*, 65 S. W. 376 (Tex. Crim. App.). Similar rules govern evidence of this kind in civil suits for divorce on the ground of adultery. *Marble v. Marble*, 36 Mich. 386; *Clement v. Kimball*, 98 Mass. 535.

EVIDENCE — DECLARATIONS CONCERNING MENTAL STATE — DECLARATIONS OF PRESENT INTENTION AS PROOF OF EXISTING FACT. — In a suit by

one alleged to be an illegitimate posthumous child of a deceased workman to recover compensation for the death of the alleged father as a dependent under the English Workmen's Compensation Act, declarations by the deceased to the mother and to others, admitting that he was the father of the child and declaring his intention to marry the mother, were offered in evidence to prove paternity and dependency. *Held*, that the declarations are admissible. *Lloyd v. Powell Duffryn Steam Coal Co., Ltd.*, [1914] A. C. 733.

For a discussion of the results to which this decision seems to lead, see this issue of the REVIEW, p. 299.

EXECUTORS AND ADMINISTRATORS — RIGHTS, POWERS AND DUTIES — RIGHT OF RETAINER: PRESENT SCOPE OF THE DOCTRINE. — A and B, joint trustees, lost part of the trust funds by an improper investment. A died, appointing B and C his executors. C took A's place as joint trustee, and now claims the right to retain from A's estate the sum due the trust. *Held*, that he may retain. *In re Harris*, [1914] 2 Ch. 395.

A became bound to pay a certain sum to trustees, in trust for herself for life, and then for B, her daughter. She died thirty years after the obligation arose, without having paid the debt, and appointed B her executrix. B now claims the right to retain the sum due from A's estate. *Held*, that she may not retain for a debt due her as *cestui que trust*. *In re Sutherland*, 49 L. J. 490 (Chan. Div.).

In England an executor may retain from the estate the amount of a debt due to him. This right arose from the common-law rule allowing preferences to creditors of the estate and the consequent injustice if the executor were placed in a worse position than other creditors, through his inability to sue himself. *Woodward v. Lord Darcy*, Plowd. 184; *Crowder v. Stewart*, 16 Ch. D. 368. When the debt is due to another in trust for the executor, the trustee can bring suit and with the abolition of the executor's common-law right to prefer creditors, the necessity for retainer ceases. The second principal case seems correct. See, therefore, *Cockcroft v. Black*, 2 P. Wms. 298. Cf. *Thompson v. Thompson*, 9 Price, 469. It does not seem material that the claim arose after the testator's death. *In re Barrett*, 43 Ch. D. 70. In England, moreover, the executor may retain even if the claim was barred by the Statute of Limitations in the lifetime of the testator. *Stahlschmidt v. Lett*, 1 Sm. & G. 415. In America, the right of retainer exists in a few states, but has been generally abolished, or limited to solvent estates. See *Nelson v. Russell's Adm'rs*, 15 Mo. 356; *Miller v. Irby*, 63 Ala. 477. In states where the right still exists, the English rules are generally followed, except that, by the weight of American authority, an executor may not retain for a debt barred by the Statute of Limitations. *Hoch's Appeal*, 21 Pa. 280; *Rogers v. Rogers*, 3 Wend. (N. Y.) 505. If a legatee may plead the statute against a creditor when the executor does not, he should have the same right against the executor himself, and this feature of the American doctrine therefore seems preferable. See 22 HARV. L. REV. 452.

GIFTS — GIFTS *Mortis Causa* — GIFT OF DONOR'S OWN CHECK. — The testator drew a check for an amount greater than the amount of his deposit, and delivered it to the plaintiff as a gift *mortis causa*. The plaintiff now sues the executor, who had withdrawn the funds from the bank. *Held*, that the plaintiff may recover the amount of the deposit. *Aubrey v. O'Byrne*, 49 Nat. Corp. Rep. 302 (Ill. App. Ct., Oct. 8, 1914).

The negotiable instrument of a third party may be the subject of a valid gift *mortis causa*. *Clement v. Cheesman*, 27 Ch. D. 631; *Brown v. Brown*, 18 Conn. 410. Delivery of the instrument would carry with it an irrevocable power of attorney to enforce the obligation in the name of the donor. *Snell-*